correcting an ailment by the refusal of the patient to submit to the proper treatment cannot be held liable for resulting damages. Where the patient is incompetent to speak for himself, and the members of his family refuse to permit an operation or other proper treatment, the physician is relieved from liability for the course pursued or other injuries resulting from failure to apply the treatment.

Failure to Return for Treatment. A patient who, after receiving treatment, fails to return to have the entire course of treatment completed, is guilty of contributory negligence. In other words, his own act has contributed to his injury. However, it should be stated that if the patient's failure to return is a result of his discovery that his condition is not improving because of the physician's negligent treatment, the patient may go to another physician for proper treatment and still hold the first liable for such injuries as had occurred prior to the change.

Generally speaking, negligence of the patient will bar any action based upon the negligence of the physician on the theory that the negligence of the patient supervenes that of the physician. However, it has been held that if both the physician and the patient have been negligent and the injuries due to the respective negligence of each can be separated, the physician is liable for the injuries due to his own want of skill or care. It has further been held that where the liability for negligence on the part of the physician has already been incurred, subsequent negligence of the patient which merely aggravates the injury does not discharge the physician from liability for such damage as would have occurred regardless of the patient's act.

Some cases have held that a physician may not be held liable for injuries resulting from an operation performed at the insistence of the patient despite the physician's advice that it is unnecessary and improper. Thus, it has been held that where the patient did not consult his surgeon as to the propriety of bleeding him, but only required the performance of the manual operation, there was no liability. However, a physician should always be wary of patients who have definite convictions as to what form of treatment they want. When actually faced with injury, such a person may state that the treatment itself was negligently performed or even take the position that he did not really give any directions, but that the act was done upon the suggestion of the physician and acquiesced in by the patient because of his reliance on the physician's superior knowledge. It is suggested that whenever a physician is asked to perform an act which is against the physician's best judgment, the patient should be sent elsewhere. At least a physician should obtain a written statement from the patient to the effect that he is receiving the treatment against the physician's advice.

Finally, there are instances in which a physician secures from a patient a writing in which an attempt is made to have the patient assume all risk. It must be remembered that even though such a writing is obtained and may have the effect of eliminating liability in so far as the choice of the method of treatment is concerned, nevertheless, a liability for negligent performance of the treatment will remain. A physician cannot eliminate by contract liability for his negligence. Thus, it has been held that where a patient was warned that danger attended the use of x-rays and the patient agreed to assume the risk, such assumption would not be deemed to cover the operator's negligence.

Generally, it may be said that the rules of contributory negligence are mere expositions of a rule of fairness. However, occasions may arise in which an act that appears fair and reasonable to the physician may not appear as such to a court or jury. For that reason, a physician should always keep in mind the general directions of the law in reference to the conduct which may be expected of the patient.

ENDOCRINOLOGY: A CRITICAL ANALYSIS*

By Edward H. Rynearson, M. D. Rochester, Minnesota

Suggested Reading

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^{*}This paper is in two parts: Part I appeared in the June issue of California and Western Medicine (page 257); Part II appears in current issue (page 12).

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(Continued from Text Page 51)

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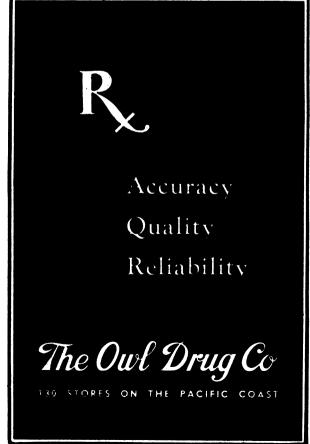
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